

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SEMYON GRINBLAT,

Plaintiff,

-against-

MEMORANDUM & ORDER

20-CV-1643 (KAM) (CLP)

SPEEDWAY LLC, JOHN DOE 1-X,
AND CORPORATIONS 1-X,

Defendants.

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KIYO A. MATSUMOTO, United States District Judge:

On April 1, 2020, plaintiff Semyon Grinblat filed this this putative class action under Title III of the Americans with Disabilities Act ("ADA") and corresponding provisions of state law, against defendants Speedway LLC, John Doe 1-X, and Corporations 1-X (collectively, "defendants"), alleging that defendants maintained illegal barriers to access. (See ECF No. 1, Complaint ("Compl.")) Plaintiff twice amended his complaint (see ECF Nos. 5, 19), but never moved to certify a class. On March 4, 2021, counsel for plaintiff informed the Court that plaintiff Grinblat passed away on February 13, 2021. (ECF No. 24, Suggestion of Death.) On that same day, plaintiff's counsel moved to stay all proceedings, hearings, and deadlines in this

case pursuant to Federal Rule of Civil Procedure 25(a) until June 2, 2021, to allow an executor/administrator/representative of the deceased to be appointed and substituted as plaintiff in this case. (ECF No. 25, Motion to Stay.)

On March 5, 2021, Magistrate Judge Cheryl L. Pollak granted plaintiff's counsel's motion to stay and adjourned a status conference previously set for April 7, 2021 *sine die*. (See Docket Order 3/5/2021.)

On March 10, 2021, this Court issued an Order to Show Cause, directing plaintiff to show cause "within seven (7) days of entry of this Order why the Order staying this action entered March 5, 2021 should not be lifted, why plaintiff's ADA claim should not be dismissed as moot, and why the remaining claims should not be dismissed pursuant to 28 U.S.C. § 1367." (See Order to Show Cause 3/10/2021.) Plaintiff's response to the Show Cause Order was due March 17, 2021, however, plaintiff's counsel failed to respond as of the date of this Order.

For the reasons set forth in Judge Brian M. Cogan's well-reasoned Memorandum Decision and Order dismissing another action brought by plaintiff Grinblat, this Court dismisses plaintiff's ADA claim as moot and declines to exercise supplemental jurisdiction over plaintiff's remaining state and

city law claims pursuant to 28 U.S.C. § 1367. See *Grinblat v. Michell Wolf LLC*, No. 20-cv-5857 (BMC), 2021 WL 878554, at *1 (E.D.N.Y. Mar. 9, 2021). Specifically, this Court agrees that Federal Rule of Civil Procedure 25(a) is inapplicable in this case because “Title III ADA claims become moot when the plaintiff dies because the only relief available is injunctive relief, and injunctive relief cannot benefit a deceased plaintiff.” *Id.* (citing Fed. R. Civ. P. 25(a) and collecting cases). Moreover, plaintiff did not move for class certification before he passed away. Accordingly, the Court dismisses plaintiff’s ADA claim as moot and declines to exercise supplemental jurisdiction over plaintiff’s state and city law claims, and those claims are dismissed without prejudice to reassert them in state court. See 28 U.S.C. § 1367.

Finally, and most egregiously, plaintiff failed to respond to this Court’s Order to Show Cause and the time to do so has expired. (See Order to Show Cause 3/10/2021.) Federal Rule of Civil Procedure 41(b) authorizes a district court to “dismiss a complaint for failure to comply with a court order, treating the noncompliance as a failure to prosecute.” *Simmons v. Abruzzo*, 49 F.3d 83, 87 (2d Cir. 1995) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 633 (1962)). A court may act *sua sponte*

to dismiss a case for failure to prosecute under Rule 41(b).

See Le Sane v. Hall's Sec. Analyst, Inc., 239 F.3d 206, 209 (2d Cir. 2001) ("Although the text of Fed. R. Civ. P. 41(b)

expressly addresses only the case in which a defendant moves for dismissal of an action, it is unquestioned that Rule 41(b) also gives the district court authority to dismiss a plaintiff's case sua sponte for failure to prosecute."). Courts in this circuit

"have repeatedly found that dismissal of an action is warranted when a litigant, whether represented or instead proceeding *pro se*, fails to comply with legitimate court directives." *Citak v.*

More Consulting Corp., No. 17-cv-6049, 2018 WL 5311411, at *2 (E.D.N.Y. Oct. 25, 2018) (internal quotation marks omitted).

When determining whether to dismiss on this ground, courts consider five factors: "1) the duration of plaintiff's failures or non-compliance; 2) whether plaintiff had notice that such conduct would result in dismissal; 3) whether prejudice to the defendant is likely to result; 4) whether the court balanced its interest in managing its docket against plaintiff's interest in receiving an opportunity to be heard; and 5) whether the court adequately considered the efficacy of a sanction less draconian than dismissal." *Baffa v. Donaldson, Lufkin & Jenrette Sec.*

Corp., 222 F. 3d 52, 63 (2d Cir. 2000). The decision to dismiss

"is a matter committed to the discretion of the trial judge," *Peart v. City of New York*, 992 F.2d 458, 461 (2d Cir. 1993), and in general, "no one factor is dispositive." *Nita v. Connecticut Dep't of Env'tl. Prot.*, 16 F.3d 482, 485 (2d Cir. 1994).

Here, plaintiff's failure to comply with the Court's Order to Show Cause in addition to the legal deficiencies in plaintiff's ADA claim weigh in favor of dismissal. See *Winegard v. New Media Inv. Grp., Inc.*, No. 19-cv-4834 (EK) (RLM), 2020 WL 5015361, at *3 (E.D.N.Y. Aug. 25, 2020) (dismissing case for, among other reasons, failing to respond to an Order to Show Cause). The Court's deadline for plaintiff to show cause why the stay should not be lifted and why the case should not be dismissed has expired and plaintiff has submitted no additional filings suggesting any effort to comply with this Court's Order. *Id.* ("The Court's interest in efficient case management outweighs a plaintiff's opportunity to be heard where the plaintiff repeatedly fails to pursue his or her claims and fails to comply with court orders."). For these reasons, viewing the record as a whole and balancing the factors above, dismissal is appropriate here.

CONCLUSION

For the foregoing reasons, the Court dismisses plaintiff's ADA claim as moot, declines to exercise supplemental jurisdiction over plaintiff's state and city law claims, and dismisses the state and city claims without prejudice to reassert them in state court. See 28 U.S.C. § 1367.

Accordingly, plaintiff's complaint is dismissed. The Clerk of Court is respectfully directed to enter judgment in favor of defendants and to close this case.

SO ORDERED.

/s/
KIYO A. MATSUMOTO
United States District Judge
Eastern District of New York

Dated: Brooklyn, New York
March 25, 2021